decided cases on this point, for the reason that the government has never made any such contracts. There is dictum to the effect, in *Seybolt* v. *N. Y., Lake Erie & Western Ry. Co.*, 95 N. Y. 563, that such a contract would not be upheld on the ground that the railroad's obligation to carry mails and those in charge of them, is fixed by statute, and any stipulation of exemption in any contract would be void for the want of authority in the officer representing the government to make it.

CODE PLEADING—COUNTER CLAIM—CONSTRUCTION OF WORD "TRANSACTION." —Where the plaintiff, who had been general manager of a publishing house, and who by false representations as to the assets of the business had induced the defendant to purchase the business, and who had contracted with the defendant to become the defendant's general manager for a term of years, sued the defendant for breach of this contract of employment, *held*, that the defendant might counterclaim for the damages resulting to him from the plaintiff's misrepresentations. *Laska* v. *Harris* (N. Y. 1915), 109 N. E. 599.

This counterclaim could be supported only if it was found to be a cause of action arising out of the contract or transaction set forth by the plaintiff as the foundation of his claim, or connected with the subject of the plaintiff's action. NEW YORK CODE OF CIVIL PROCEDURE, § 501. It is generally recognized that a defendant may counterclaim for the plaintiff's fraud in inducing defendant to enter into a contract, for the breach of which the plaintiff is suing. *Isham* v. *Davidson*, 52 N. Y. 237; *In re Harper*, 175 Fed. 412. The plaintiff's representations are regarded as part of the transaction set forth in the complaint. Likewise the deposit of security for a note is such a part of the transaction set forth in an action on the note as to give rise to a counterclaim by the defendant when the plaintiff has converted the security. *Rush* v. *First National Bank*, 17 C. C. A. 627; *First National Bank* v. *O'Connell*, 84 Ia. 377, 51 N. W. 162; *Cass* v. *Higenbotam*, 100 N. Y. 248, 3 N. E. 189. It is evident that the courts have not attempted to give a technical meaning to the word "transaction," but have tended rather to construe it according to its ordinary meaning, and with a view of accomplishing the purpose of the Code in simplifying and shortening procedure. Yet it has been held that the facts and events constituting the alleged transaction must bear some legal relation to each other, and mere identity of parties or chronological coincidence will not be sufficient. *Standley* v. *Northwestern Insurance Co.*, 95 Ind. 254. Accordingly in an action on a partnership note no counter-claim was allowed for the misrepresentations of the plaintiff which induced the defendant to become a member of the partnership. *Daniel* v. *Gordy*, 84 Ark. 218, 105 S. W. 256. And in a leading New York case, where the vendor of stock in a corporation sued for the purchase price, a counterclaim was not allowed for the misrepresentations of the plaintiff which subsequently induced the defendant to lend money to the corporation. *Story* v. *Richardson*, 91 N. Y. App. Div. 381. The court in the principal case has evidently accepted a much broader construction of the word "transaction" than did the courts deciding these two cases. In all three cases the legal right, upon which the defendant's cause of action was founded, arose from an act

by the plaintiff affecting a contract other than that which was the foundation of the plaintiff's complaint. The effect, if any existed, on the contract upon which the complaint was founded, was in none of the cases the foundation of the counterclaim. In the principal case, no legal connection appears to exist between the contract set forth in the complaint and the misrepresentations made by the plaintiff. The counterclaim, then, seems to fall outside the test referred to above. It likewise would appear to fall outside a test laid down in two other New York cases, that if the counterclaim is good, the plaintiff's cause of action must be a good counterclaim to the defendant's cause of action if set forth in an original complaint. *Xenia Bank* v. *Lee,* 7 Abb. 372; *Adams* v. *Schwartz,* 137 N. Y. App. Div. 230.

CONSTITUTIONAL LAW—STATUTE GIVING EMPLOYEE OF RAILWAY CORPORATION THE RIGHT TO BE HEARD BEFORE BEING DISCHARGED.—A proposed statute (Mass. Senate Document No. 537) prohibiting railway corporations, under penalty, to discharge an employee upon information concerning his conduct without first giving such employee a right to state his case in the presence of the informant, *held,* unconstitutional as depriving railway corporations of liberty and property without due process of law, and as denying employers and employees equal protection of the laws. *In re Opinion of the Justices* (Mass. 1915), 108 N. E. 807.

The court here adopts the view that the term "liberty" as used in the fourteenth amendment includes more than mere freedom from restraint, but extends to freedom to choose one's occupation, method of conducting that pursuit, and the making of all contracts necessary for carrying it on. The right to employ or discharge, with or without cause, where no civil contract binds the parties, is incident to the right. To compel the employer, therefore, to continue an employee in his service, because of inability or refusal to grant the latter a hearing, deprives him of his constitutional liberty. It is also suggested by the court that the term "property" includes the right to make and terminate contracts as the individual may think necessary to attain his greatest prosperity. A second general objection to the proposed statute is based on the clause guaranteeing to all persons the equal protection of the laws. There is nothing in the inherent nature of the business of railway corporations, as contrasted with the business of other common carriers, or other corporations, or other employers, that would be a just ground for a statute imposing this restriction only on the former. To place this requirement on railway corporations, at the same time permitting other employers to discharge their labor at will, is an unreasonable discrimination. While a like statute has never before been passed upon by the courts, the principle of the instant case is one followed by the courts in reference to legislation somewhat akin. Thus in the cases of *Adair* v. *United States,* 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764, and *Coppage* v. *Kansas,* 236 U. S. 1, 35 Sup. Ct. 240, quoted in the opinion, *Gillespie* v. *People,* 188 Ill. 176, 58 N. E. 1007, and *State* v. *Bateman,* 7 Ohio N. P. 487, the courts have held statutes making it unlawful to discharge an employee because of membership in a trade union to deprive employers of liberty and property. So statutes requiring